

DEPARTMENT OF STATE REVENUE

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LETTER OF FINDINGS NUMBER: 98-0044P WTH

Withholding Tax

For The Period: 1996

NOTICE: Under IC 4-22-7-7, this document is required to be published in the Indiana Register and is effective on its date of publication. It shall remain in effect until the date it is superseded or deleted by the publication of a new document in the Indiana Register. The publication of this document will provide the general public with information about the Department's official position concerning a specific issue.

ISSUES

I. Penalty - Late filing of information return.

Authority: IC 6-8.1-10-6, IC 6-8.1-10-2

The taxpayer protests the imposition of the late filing penalty.

STATEMENT OF FACTS

The taxpayer is a temporary employee provider for companies with needs in warehousing, shipping, and distribution. The home office is in Chicago, Illinois. There is a regional office in Indianapolis, IN. The taxpayer had 4700 employees in Indiana during 1996. The taxpayer has four customers in Indiana, of which three are in Indianapolis and one in Crown Point.

I. Tax Administration - Penalty.

DISCUSSION

The taxpayer was late filing their WH-3s for 1996 and has been assessed by the Department the maximum late filing penalty of \$25,000.

The taxpayer's accounting organization underwent a reorganization during the filing period for the 1996 WH-3s which caused manpower shortages. Coupled with this was the fact the Chief Financial Officer was undergoing chemotherapy treatments. The events resulted in the employee responsible for filing the WH-3s being overworked and forgetting to file the WH-3s. Once the error was discovered, the WH-3s were filed which was June 5, 1997, 97 days late.

The taxpayer argues the penalty should be abated due to (1) the Chief Financial Officer having chemotherapy treatments, (2) a reorganization of the accounting function which caused manpower shortages, and (3) the taxpayer feels the penalty is onerous.

IC 6-8.1-10-2 (d) states:

If a person subject to the penalty imposed under this section can show that the failure to file a return, pay the full amount of tax shown on his return, timely remit tax held in trust, or pay the deficiency determined by the department was due to reasonable cause and not due to willful neglect, the department shall waive the penalty.

FINDING

The taxpayer's protest is sustained. The taxpayer has demonstrated reasonable cause in filing the WH-3s late.